

OPINION
57-17

January 18, 1957 (OPINION)

CITIES

RE: Appointive - Officers - Removal

We are in receipt of your letter of January 16, 1957, in which you state that the mayor of the city of Napoleon is considering the removal of an appointive officer, and you wish to know what procedure would be sufficient to legally accomplish his removal. The statute under which you are proceeding and quote is Section 40-0819 of the N.D.R.C. of 1943 and reads as follows:

MAYOR MAY REMOVE APPOINTIVE OFFICERS; REASONS FOR REMOVAL TO BE GIVEN. The mayor may remove any officer appointed by him whenever he is of the opinion that the interests of the city demand such removal, but he shall report the reasons for such removal to the council at its next regular meeting."

The general rule is that where the term of office is not fixed by law, the incumbent thereof may be removed at the pleasure of the appointing power, without notice, charges or reasons. 2 McQuillin, Municipal Corporations, (2d. Ed.) 420. Where power is given to remove an appointive officer, it must be one which is exercised either for cause, in which case notice and a reasonable opportunity to be heard are indispensable, or at will, that is, without any other formality than the exertion of discretionary power. If the law conferring the power expressly authorizes the removing authority to act at will, or discretion, no question can ever arise except as to the fact of removal. Id. at 423. Where the power of appointment is conferred in general terms, the power of removal at the discretion and at the will of the appointing power is implied, and always exists unless limited or restricted by some positive provision of the law. In such cases the power of removal may be exercised at any time, without notice, and without the necessity of providing formal procedure therefor. Id. at 457.

From what has been said it would seem quite clear that there is no particular procedure required for removal of the individual in question. This assumes, of course, that there are no provisions in the city charter or ordinances which prescribe a procedure to be used in such cases. It would appear that the most appropriate method to be used in accomplishing the removal would be to deliver to the individual in question a written notice of the fact of his removal.

LESLIE R. BURGUM

Attorney General